DOCKET FILE COPY ORIGINAL RECEIVED
NOV - 6 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-128
Pay Telephone Reclassifications	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

PETITION FOR PARTIAL RECONSIDERATION

The International Telecard Association ("ITA"),[1] by its attorneys and pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, hereby petitions for reconsideration of the October 7, 1997 Order in this docket.[2] In this *Waiver Order* the Common Carrier Bureau, on its own motion and without public comment, granted a temporary, six-month waiver of the requirement, established in the *Payphone Orders,*[3] that local exchange carriers ("LECs") and payphone service providers ("PSPs") transmit payphone-specific coding digits sufficient to allow real-time identification of "800" and access code calls originated from payphones.

In issuing the *Waiver Order,* the Common Carrier Bureau has overlooked the fundamental difference between prepaid phone card services and ordinary inter-exchange telecommunications services. The *Waiver Order* should not and cannot be

[1] Members of the Association that are Regional Bell Operating Companies ("RBOCs") have not participated in the development of this Petition.

[2] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-2162 (released Oct. 7, 1997)("Waiver Order").

[3] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order"), Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("Order on Reconsideration") *(Continued on next page)*

No. of Copies rec'd 0+11
List ABCDE

applied to allow PSPs to assess payphone compensation charges on prepaid phone card providers because, unlike other interexchange carriers, prepaid providers cannot recover payphone charges from their customers *without the ability to identify payphone calls in real-time.* Thus, the Bureau's assumption that a limited waiver "will not significantly harm any parties"[4] is wrong. Prepaid providers, operating in perhaps the most competitive market in today's telecommunications industry, will be irreparably injured without the ability to track and/or block payphone originated calls in real-time. Consumers of these innovative services—including those calling from non-payphones—will necessarily face higher rates as well.

ITA therefore urges the Commission to preclude PSPs from assessing any per-call compensation charges on providers of prepaid services for the duration of the six-month waiver, in other words until adequate information is available, in real-time, for prepaid carriers to identify payphone calls and recover per-call payphone compensation charges from their customers. Only in this way can the interests of providers and consumers of prepaid card services be protected in light of the unique nature of prepaid services.

DISCUSSION

In 1996 the Commission held that to be eligible for per-call compensation beginning October 7, 1997, "each payphone" is "required to transmit specific payphone coding digits as part of their ANI . . . that specifically identif[ies] it as a payphone, not merely as a restricted line." *Waiver Order* ¶ 4. Just one week before that deadline,

---

(collectively "Payphone Orders"), *vacated and remanded in part, Illinois Public Telecommunications Assoc. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997).

[4] *Waiver Order* ¶ 12.

however, several LEC and PSP organizations claimed that it would be technically infeasible to provide such ANI digits by the implementation date. Without public comment, the Bureau on its own motion granted a six-month waiver, until March 9, 1998, of the requirement "for those LECs and PSPs not yet able to provide transmission of such digits." *Id.* ¶ 8.

The Bureau reasoned that PSPs should not be denied per-call compensation for an industry-wide problem because a delay in requiring payphone-specific coding digits will not harm interexchange carriers. Although the *Waiver Order* recognized that the absence of real-time ANI information makes it impossible for IXCs "to block those calls on a real-time basis," *id.* ¶ 13, the Bureau pointed out that lists of payphone ANIs will still be available to IXCs, allowing them to "identify[] payphone calls for the purpose of determining the number of calls for which compensation is owed." *Id.* ¶ 12. In short, because IXCs will be able to identify, and thus bill their customers for, per-call payphone compensation charges, the inability to engage in real-time blocking is not a matter of substantial concern.

This rationale simply does not apply to prepaid calling card services. Prepaid card services—which are growing exponentially and today account for an estimated 3.5 billion calls annually—are a highly competitive market segment that are completely different from ordinary interexchange services. Not only are price structures and rate levels (*e.g.*, no per-call surcharges, rates of $0.19 per-minute and lower, "postalized" distance-insensitive rate structures) the most consumer-friendly in the industry, but prepaid services are paid for in advance, and thus do not involve any bill rendered to subscribers. *As a consequence, the one and only time a prepaid card provider has to recover a payphone charge from its customer is at the time a payphone-originated call is placed.*[5]

What this means is that the inability to identify and/or block payphone calls, in real time, will significantly harm prepaid card providers, impede competition in this burgeoning market, and injure consumers. Without the ability to identify payphone calls and recover PSP charges when a call is placed, prepaid card providers will be forced either to (a) pay for such costs out of their already thin profit margins, or (b) increase rates for consumers for all prepaid calls, whether or not payphone-originated.[6] Neither result is in the public interest.

Given the highly competitive nature of the prepaid card industry, no card provider can absorb charges of 28.4 cents per call and have its product remain economically viable. Many of the smaller providers and new entrants attracted to this market, where entry costs and barriers are very low, will be driven out of business. Moreover, because per-minute rates for cards already in circulation cannot be changed, prepaid providers will be forced to immediately increase per-minute rates, even higher than the average pro rate portion of the 28.4 cents, for prepaid calls whether or not

[5] With payphone-specific ANIs, prepaid providers would be in a position to provide a customized announcement (with appropriate tariff modifications as necessary) to customers, disclosing that the card will be "decremented" a particular value or number of "units" to recover the payphone-assessed per-call charge. In the absence of real-time information, this is plainly not possible.

[6] In addition to harms caused by the unavailability of ANI information digits in real time, prepaid card providers are also harmed when LECs provide inaccurate ANI information digits. For example, at least one LEC is sending ANI information digits that indicate a call is made from a payphone when the call is actually placed from a residential line with toll restrictions. In this case, the prepaid card providers may play an announcement to the customer advising them that a payphone charge will be deducted from their card even though the call is made from a residential line. This has already lead to numerous customer complaints and harmed prepaid card providers relationships with their customers. It also harms customers who are unknowingly are paying payphone charges even though they are placing calls from a residential line. Therefore, the Commission must not only ensure that ANI
(Continued on next page)

originated from payphones. This increase in prices will necessarily be imposed on consumers who would otherwise have the choice of avoiding payphone charges by using a non-payphone with their prepaid card. In sum, the lack of real-time ANI information will substantially injure competition, prepaid providers and consumers.

The Bureau's assumption that a limited waiver "will not significantly harm any parties" is wrong. Prepaid providers will be irreparably injured without the ability to track and/or block payphone originated calls in real-time. Consumers of these innovative services—including those calling from non-payphones—will necessarily face higher rates as well. ITA therefore urges the Commission to preclude PSPs from assessing any per-call compensation charges on providers of prepaid services for the duration of the six-month waiver, in other words until adequate and accurate information is available, in real-time, for prepaid carriers to identify payphone calls and recover per-call payphone compensation charges from their customers. Only in this way can the interests of providers and consumers of prepaid card services be protected in light of the unique nature of prepaid services.

---

information digits are provided, but that they are the correct ones before enabling PSPs to collect per call compensation.

CONCLUSION

For all these reasons, the Commission should modify the *Waiver Order* to preclude PSPs from assessing any per-call compensation charges on providers of prepaid card services until accurate payphone-specific coding digits are transmitted from each payphone.

Respectfully submitted,

By:______________________

Glenn B. Manishin
Michael D. Specht, Senior Engineer
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
202.955.6300
202.955.6460 fax

Dated: November 6, 1997.

Counsel for the International Telecard Association